

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

BY MAIL

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A case related to *Wooden* was given a “GVR” order: *certiorari* was granted, the judgment vacated, and the case remanded to the Eleventh Circuit “for consideration in light of *Wooden v. United States*...” 596 U.S. ____ (Order list Apr. 4 2022). That case was *Lewis v. United States*, No. 20-7617 (2022).

The circumstances in *Lewis* closely resemble my own case, where a single prior conviction was split into multiple convictions for the purposes of using the enhanced penalties of the ACCA. See 18 U.S. C. §924(e)

In *Wooden*, the Supreme Court clarified the utility of the word “occasions” from §924(e) and it’s appropriate application for the purposes of using the enhanced ACCA penalties. I intend argue that the remand in *Lewis* directly corresponds to the use of ACCA penalties in my case.

“Claims not raised in an opening brief are deemed waived.” *Jenkins v. Winter*, 540 F.3d 742 (8th Cir. 2008). Even though the *Wooden* decision was published after my opening brief was filed, it is still improper to bring up new arguments in a reply brief. Therefore, in order for the merits of this argument to be properly briefed, it is necessary to amend the original petition.


This allowance would also avoid the cumbersome need to later ask the Eighth Circuit for permission to file a second-successive §2255 petition for this singular issue.

Finally, granting this motion and allowing this argument to be properly made will give this Court a chance to answer important questions about the application of *Wooden* generally. These questions include whether *Wooden* declared a new rule of law, and whether it can and should be applied to cases like mine.¹

¹ Specifically, whether *Wooden* would apply retroactively and, if not, whether a timely filed (first) petition for §2255 may apply *Wooden* even though a second-successive §2255 could not.

For the foregoing reasons, the Court should grant this motion and allow me to amend my original Motion to Vacate, Set Aside, or Correct a Sentence to properly raise a *Wooden* argument. The government would then (I assume) be allowed to file a separate opposition to that argument. Subsequently, I would then file a singular response to both.

Signed this ____ day of April, 2022.



BARRETT C. SWAN #32540-044
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Defendant/Petitioner in *Pro Se*

CERTIFICATE OF SERVICE

With my signature above, I attest that I have sent a true and correct copy of the foregoing **MOTION FOR LEAVE TO AMEND §2255 PETITION** to the Clerk of the U.S. District Court and to the representative of the government by placing them in the inmate mail system on the signature date reflected above.

Service was made via U.S. Postal Mail using the addresses below:

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